

## **CHAPTER 23. ACTIONS ARISING UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT MANDATE ACTIONS UNDER PUBLIC RESOURCES CODE SECTION 21000 ET SEQ. (CEQA)**

### **23.1 Where Filed**

Mandamus actions challenging an agency decision under the California Environmental Quality Act (Public Resource Code 21000 et seq.) shall be filed in the Civil Division of the Clerk's Office at the Courthouse in Ukiah, California.

Eff. July 1, 2000.

### **23.2 Ordering the Administrative Record**

In accordance with Public Resources Code section 21167.6, within 10 business days after the action is filed, petitioners shall personally serve on the appropriate public agency their request for preparation of the administrative record or their notice of election to prepare the record themselves.

Eff. July 1, 2000.

### **23.3 Mediation**

In accordance with Government Code section 66031, within five days after the deadline for respondent or defendant to file a response to the action, plaintiff or petitioner shall prepare and lodge with the civil and probate department a notice form for the court's signature inviting mediation. The clerk shall then mail the notice of invitation to the parties.

Eff. July 1, 2000.

### **23.4 Preparing the Administrative Record**

- a. Preparation by the Public Agency.** Within 20 calendar days after receipt of a request to prepare the administrative record, the public agency responsible for such preparation shall personally serve on petitioners a preliminary notification of the estimated cost of preparation, setting forth the agency's normal costs per page, other reasonable costs, if any, the agency anticipates, and the likely range of pages. This notice shall also state, to the extent then known, the location(s) of the documents anticipated to be incorporated into the administrative record, shall designate the contact person(s) responsible for identifying the agency

personnel or other person(s) having custody of those documents, and shall provide a listing of dates and times when those documents will be made available to petitioners or any party for inspection during normal business hours as the record is being prepared. This notice shall be supplemented by the agency from time to time as additional documents are located or determined appropriate to be included in the record.

- b.** Upon receipt of this preliminary notification, petitioners may elect to prepare the record themselves provided they notify the agency within five calendar days of such receipt. If petitioners so elect, then within 40 calendar days of service of the initial notice to prepare the administrative record, petitioner shall prepare and serve on all parties a detailed index listing the documents proposed by petitioners to constitute the record. Within seven calendar days of this notification, the agency and/or other parties shall prepare and serve the petitioners and all parties with a document notifying them of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record. The agency shall promptly notify petitioners of any required photocopying procedures and/or conditions with which petitioners must comply in their preparation of the record.
- c.** If petitioners do not so elect, then within 40 calendar days after service of the request to prepare the administrative record, the agency shall prepare and serve on the parties a detailed index listing the documents proposed by the agency to constitute the record and provide a supplemental estimated cost of preparation. Within seven calendar days of receipt of this notification, petitioners and/or any other parties shall prepare and serve the agency and all parties with a document notifying the agency of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record.
- d. Preparation by Petitioners.** Within 20 calendar days after receipt of petitioners' notice of election to prepare the record themselves, the public agency responsible for certification of the record shall personally serve on petitioners a preliminary notification designating, to the extent then known, the location(s) of the documents anticipated to be incorporated into the administrative record, the contact person(s) responsible for identifying the agency personnel or other person(s) having custody of those documents, and the dates and times when those documents will be made available to petitioners or any party for their inspection and copying. This notice shall also state any required photocopying procedures and/or conditions with which petitioners must comply in their preparation of the record. This notice shall be supplemented by the agency as additional documents are located or determined appropriate to be included in the record. Within 40

calendar days after service of petitioners' notice of election, petitioners shall prepare and serve on all parties a detailed index listing the documents proposed by petitioners to constitute the record. Within seven calendar days of this notification, the agency and/or other parties shall prepare and serve the petitioners and all parties with a document notifying them of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record.

Eff. July 1, 2000.

### **23.5 Format of Administrative Record**

- a. Type of Paper.** The administrative record (record) shall be prepared on paper, white or unbleached, of not less than 13-pound weight, 8 1/2 by 11 inches, using a photocopying process that will produce clear and permanent copies legible for printing. Only one side of the paper shall be used and the margin shall be not less than 1 1/4 inches on the left side of the page. Alternatively, original copies of the environmental documents may be lodged as part of the administrative record, provided that original copies are also provided to all parties in the lawsuit. The pages of the administrative record shall be numbered consecutively and bound on the left margin. The use of recycled paper is encouraged.
- b. Volume Designation.** The record shall be provided in one or more volumes of not more than 300 pages per volume, separately bound. The cover of each volume of the administrative record shall be the same size as its pages and contain the same material as the cover of a brief, but shall be prominently entitled "ADMINISTRATIVE RECORD." The first volume of the administrative record shall have at the beginning an index of each paper or record in the order presented in the administrative record referring to each paper or record by title or description and the volume and page at which it first appears.
- c. Organization.** The record in all matters other than Timber Harvest Litigation should be organized with the following documents (as applicable) at the front of the record, in the following order:

  - 1. The Notice of Determination.
  - 2. The resolution(s) or ordinance(s) adopted by the lead agency approving the project, including any resolution(s) or ordinance(s) adopted in compliance with Public Resources Code sections 21081 and 21081.6.

3. The draft or revised draft Environmental Impact Report and initial study.
4. The comments received on and the responses to those comments prepared for the draft Environmental Impact Report or Negative Declaration, including any modifications to the environmental documents and project made after the comment period.
5. The remainder of the final Environmental Impact Report (e.g., the technical appendices and other technical materials).
6. The staff reports prepared for the approving bodies of the lead agency.
7. Transcripts and/or minutes of hearings.
8. The remainder of the administrative record, preferably in chronological order.

The record in Timber Harvest Litigation should be organized with the following documents (as applicable) at the front of the record, in the following order:

1. The Timber Harvest Plan.
2. Amendments and other correspondence relative to the Timber Harvest Plan.
3. The Pre Harvest Inspection minutes and agency review letters.
4. The Official Response.
5. The notice of conformance.
6. Timely public comment letters.
7. Letters received after the close of the public comment period.

This listing of documents is not intended to dictate the content of the record, but instead is intended to describe a uniform order for documents typically contained in a record. The lead agency is encouraged to use tabs to separately identify each of these portions

of the record. The parties are referred to Public Resources Code section 21167.6(e) as to what the record should contain.

Eff. July 1, 2000. As amended, eff. Jan. 1, 2003

### **23.6 Certifying and Lodging the Record**

Upon completion of preparation of the record, it must be certified by the agency before it is filed with the court. If the agency has prepared the record, it shall make such certification and shall personally serve and lodge the record in the appropriate court department no later than 60 days after the request. If the petitioners have elected to prepare the record, petitioners must transmit it to the agency for certification. After such certification, petitioners shall then personally serve and lodge the record in the appropriate court department no later than 60 days after service of the notice of election to prepare. If the agency refuses to make a complete certification, it shall make a partial certification, specifying any alleged defects in the record. Any extension of the 60-day time period may be obtained by filing a stipulation of the parties and obtaining court approval of the extensions prior to the expiration of the 60-day period. Also, an extension may be obtained from the court upon a properly noticed hearing scheduled prior to the expiration of the 60-day period.

Eff. July 1, 2000.

### **23.7 Disputes**

**Regarding the Contents of the Administrative Record:** Once the administrative record has been filed, any disputes about its accuracy or scope should be resolved by appropriate noticed motion. For example, if the agency has prepared the administrative record, petitioners may contend that it omits important documents or that it contains inappropriate documents; if the petitioners have prepared the record, the agency may have similar contentions. A motion to supplement the certified administrative record with additional documents and/or to exclude certain documents from the record may be noticed by any party and should normally be filed concurrently with the filing of petitioners opening memorandum of points and authorities in support of the writ. Opposition and reply memoranda on the motion should normally be filed with the opposition and memoranda, respectively; regarding the writ, the motion should normally be calendared for hearing concurrently with the hearing on the writ.

Eff. July 1, 2000.

### **23.8 Notice of Hearing**

The petitioner shall notice a hearing date on the petition for writ of mandate consistent with Public Resources Code section 21167.4. The hearing shall be noticed for not later than 160 days from the date of filing the petition.

Eff. July 1, 2000.

### **23.9 Briefing Schedule and Length of Memoranda**

- a. Unless otherwise ordered by the court, petitioner shall file and serve personally, by overnight mail or, if previously agreed, by fax, an opening memorandum of points and authorities in support of the petition within 30 days from the date the administrative record is served.
- b. Respondent and Real Party in Interest shall file and serve personally, by overnight mail or, if previously agreed, by fax, opposition points and authorities, if any, within 30 days following service of petitioner's memoranda of points and authorities.
- c. Petitioner shall have 20 days from service of the opposition's points and authorities to file and serve personally, by overnight mail or, if previously agreed, by fax, a reply memorandum of points and authorities.
- d. The parties may agree upon a shorter time frame for briefing by written stipulation filed with the court.
- e. Any request for permission to file a memorandum in excess of the 15-page limit shall be made pursuant to Rule 313(d), California Rules of Court.

Eff. July 1, 2000.

### **23.10 Settlement Meeting**

The initial notice required by Public Resources Code section 21167.8 shall provide that, if the parties agree, the first meeting will be continued so as to take place no later than 35 days after the administrative record is served. If the parties do not agree to this continued first meeting date, then the first meeting shall take place in accordance with Public Resources Code section 21167.8 and a second meeting is ordered to take place within 5 days after the administrative record is served. The parties shall agree as to the time and place of any meeting pursuant to Public Resources Code section 21167.8. Other meetings may be scheduled by the parties. The statement of issues required by 21167.8(f) shall identify those portions of the administrative record that are directly

related to the contentions and issues remaining in controversy. The court will utilize these statements in focusing on the legal and factual contentions and issues to be resolved. However, such contentions and issues must be consistent with the pleadings to be properly resolved by the court.

Eff. July 1, 2000.

### **23.11 Trial Notebook**

Petitioner shall prepare a trial notebook which shall be filed with the appropriate trial department no later than five days before the date of the hearing. The trial notebook shall consist of the petition, the answer(s), the briefs, any motions set to be heard at trial, the statement of issues, and any other document(s) agreed upon by the parties.

Eff. July 1, 2000.

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